IN THE HIGH COURT OF BOMBAY AT GOA

CRIMINAL MISC. APPLICATION NO. 267 OF 2006

IN

STAMP NUMBER MAIN NO. 610 OF 2006

ANIL @ MOTTU,PRESENTLY LODGED IN AGUADA CENTRAL JAIL. ....Applicant

Versus

STATE(THROUGH PUBLIC PROSECUTOR) ....Respondent

Shri B. S. Desai (legal Aid Scheme), Advocate for the applicant.
Shri C.A. Ferreira, Public Prosecutor for State.

Coram:- N. A. BRITTO, J.

Date:- 26th July, 2006

P.C.:

Heard Shri B.S. Desai, learned Counsel on behalf of the applicant/accused and Shri C.A. Ferreira, Public Prosecutor on behalf of the respondent/complainant.

In compliance with order dated 4/05/2006, of this Court, the applicant/accused had filed an application for condonation of delay in presenting the appeal on 27/04/2006.

The records show that the applicant/accused was convicted and sentenced by the learned Additional Sessions Judge, Margao in Sessions Case No.3/94 on 6-12-1995. The applicant was accused no.8 in the said Sessions Case and it can be seen from the Judgment of the learned Additional Sessions Judge, Margao, that the accused was represented by an Advocate. As stated in the application filed as well as in the reply filed

on behalf of the respondent, it appears that the applicant/accused absconded from the prison on 6/01/1996, i.e.after about 31 days of the pronouncement of the Judgment on 6/12/1995. The accused was subsequently arrested after a gap of about 3 years on 29/10/1999 and again absconded on 21/07/2000 and has now been arrested again after a gap of 5 years on 9/07/2005 and it is only thereafter that on or about 27/04/2006 that the applicant/accused presented the appeal before this Court and later filed the application for condonation of delay.

On behalf of the applicant/accused, reliance has been placed on the case of N. Balkrishnan Versus M. Krishnamurthy (AIR 1998 SC 3222) wherein the delay of 883 days was condoned by the Supreme Court. The said delay was condoned since the explanation submitted therein that the delay had occured on account of the failure of the Advocate to inform his client as well as that of the client-appellant to take action in filing the appeal was accepted. It is not the length of the delay which matters but the explanation in support of the same. There is absolutely no cause shown by the applicant/accused to explain the delay, first, when the applicant/accused was in prison for about 31 days and thereafter when he was arrested on 9/07/2005. In between the accused had absconded on two occassions and was free to file an appeal even by engaging services of Advocate, first for about 3 years and again for about 5 years. Considering the facts, there is no cause shown by the applicant/accused, and much less sufficient cause, in preferring this appeal. It appears that instead of preferring this appeal within time, the applicant/accused prefered to abscond from prison.

In view of the above, the application is dismissed.

N. A. BRITTO, J.

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